

PROPOSED AMENDMENTS  
TO THE  
CALIFORNIA CODE OF REGULATIONS  
**TITLE 23, STATE WATER RESOURCES CONTROL BOARD  
SECTIONS 2713, 2717-2717.7, LAWS GOVERNING RED TAGS**

# **INITIAL STATEMENT OF REASONS**

JULY 4, 2003

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

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## **INITIAL STATEMENT OF REASONS**

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### PURPOSE AND RATIONALE OF THE PROPOSED REGULATORY ACTION:

In 2002, the Legislature enacted Assembly Bill No. 2481 (AB 2481) (Stats. 2002, ch. 999), which became effective on January 1, 2003. AB 2481 allows local agencies to prohibit fuel delivery to an underground storage tank (UST) system found to have one or more “significant violations” by affixing a red tag to the system’s fill pipe. (Health & Saf. Code, § 25292.3.) If the significant violation poses an imminent threat to human health, safety, or the environment, the local agency may affix the red tag immediately upon discovery of the violation. (*Id.* § 25292.3, subd. (a).) If the significant violation does not pose such a threat, the local agency must first notify the owner or operator, giving the owner or operator seven days to correct the violation before it may affix a red tag to the fill pipe. (*Id.* § 25292.3, subd. (b).) After the owner or operator of a red-tagged UST system corrects the violation and notifies the local agency, the agency must inspect the UST system within five days to determine whether it continues to be in significant violation. (*Id.* § 25292.3, subd. (f).) If the local agency determines that the system has been corrected, it must immediately remove the red tag. (*Ibid.*) AB 2481 requires that the State Water Resources Control Board (State Board) adopt regulations to define what constitutes a “significant violation.” (*Id.* § 25292.3, subd. (g).)

The proposed regulations implement AB 2481 by defining the terms “significant violation” and “imminent threat to human health or safety or the environment.” These definitions describe the circumstances when it is appropriate for a local agency to affix a red tag to the fill pipe of a non-compliant UST system. The proposed regulations describe how a local agency may obtain a red tag and how it must be affixed to the non-compliant UST system. Additionally, the proposed regulations indicate how the tag must appear and what information it must contain. The regulations also describe certain situations in which a local agency may *not* affix a red tag and create a special rule for removal of red tags in an emergency if a red tag has been affixed to an emergency generator tank system. Finally, the regulations clarify that, as part of its existing requirement to report UST enforcement activities, local agencies shall submit certain information to the State Board regarding UST systems in their jurisdiction that have been red-tagged.

### STATEMENT REGARDING SMALL BUSINESS ALTERNATIVES – SUMMARY OF ECONOMIC IMPACTS ON BUSINESSES AND INDIVIDUALS:

No proposed alternatives were defined that would lessen the adverse impact on small businesses, as the State Board has determined that the proposed regulations will not have a significant adverse economic impact on California businesses and individuals. The proposed regulations do not create any new policy or impose any new requirement on business, but rather provide an enforcement mechanism to local agencies to deal with UST systems found to

have significant violations. In fact, many businesses are likely to benefit from the proposed regulations. The regulations should provide local agencies with an efficient enforcement mechanism, faster compliance times and foster a more productive and cooperative working relationship between the local agencies and the regulated community while maintaining protection of human health and safety and the environment. In addition, the regulations should benefit businesses that stay in compliance with the law by removing any unfair business advantage held by those owners and operators operating in significant violation.

STUDIES, REPORTS, AND OTHER DOCUMENTS RELIED UPON:

The State Board did not rely on technical, theoretical, or empirical studies, reports, or similar documents in proposing these regulations.

MANDATE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not mandate the use of specific technologies or equipment.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS:

The proposed amendments do not unnecessarily duplicate or conflict with federal regulations. A review of the Code of Federal Regulations did not indicate the existence of duplicative or conflicting law.

**2713. PERMIT APPLICATION, QUARTERLY REPORT AND TRADE SECRET  
REQUEST REQUIREMENTS**

SPECIFIC PURPOSE FOR THE REGULATION

Section 2713 generally requires that local agencies transmit to the State Board, on a quarterly basis, certain information pertaining to its UST implementation and enforcement activities. The proposed regulation clarifies that, as part of its reporting of enforcement activities, local agencies shall submit certain information regarding UST systems in their jurisdiction that have received a red tag.

NECESSITY

This proposed regulation is necessary so that the State Board can track UST compliance issues and assist local agencies with enforcement efforts if necessary. Additionally, Part 281.40 of Title 40 of the Code of Federal Regulations provides that, as a condition for obtaining federal approval of a state's UST program, the state must maintain enforcement data collected in order to monitor over time the status of the regulated community. (40 CFR 281.40, subd. (g).) The proposed regulation is necessary to ensure the adequacy of California's UST enforcement data collection and tracking efforts in order to prevent obstacles to obtaining state program approval.

## **2717. ADDITIONAL DEFINITIONS**

### **SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation defines the terms “significant violation” and “imminent threat to human health or safety or the environment.”

### **NECESSITY**

This proposed regulation is necessary to implement Health and Safety Code Section 25292.3(g), which requires that the State Board adopt regulations to define “significant violations.” The definitions are necessary to avoid ambiguity and minimize conflicting interpretations of the proposed regulations.

## **2717.1. AFFIXING RED TAGS**

### **2717.1, subdivisions (a), (b)**

#### **SPECIFIC PURPOSE FOR THE REGULATION**

The proposed regulations specify the circumstances under which a local agency may affix a red tag to a UST system with one or more significant violations. The regulations also specify that if a local agency does affix a red tag to the fill pipe of a non-compliant UST system, it must use State Board-issued tag, tamper-resistant strap or straps, fill pipe bag, or any combination thereof.

#### **NECESSITY**

These proposed regulations, in part, reiterate statutory requirements in order to provide clarity. In addition, the proposed regulations are necessary to create consistency with respect to the method by which local agencies affix red tags. Consistency is important so that the regulated community will be able to readily ascertain whether a UST system has been appropriately red-tagged by a local agency. These regulations are necessary to implement statutory requirements.

### **2717.1, subdivision (c)**

#### **SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation requires that a local agency determine the level of stored product in the tank prior to affixing a red tag.

#### **NECESSITY**

This proposed regulation, in conjunction with proposed section 2712.2(b), is necessary to provide the local agency with information to determine whether a red-tagged system has received petroleum in violation of the law. (See Health & Saf. Code, § 25292.3 subds. (c), (d).) This information will assist any enforcement action for improper deposit of petroleum into a UST system with a red tag.

**2717.1, subdivision (d)**

**SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation specifies that the State Board shall provide red tags, tamper-resistant straps, and fill pipe bags to the local agencies upon request, and requires that if a local agency does affix a red tag to the fill pipe of a non-compliant UST system, it must use State Board-issued tag, tamper-resistant strap or straps, fill pipe bag, or any combination thereof.

**NECESSITY**

This proposed regulation is necessary to inform local agencies of the method for obtaining red tags and devices for affixing red tags, and to ensure that only official red tags and devices are used by local agencies. This will allow the regulated community and persons who deposit petroleum into underground storage tanks to become familiar with the appearance of an official red tag and to trust its validity.

**2717.1, subdivisions (e)-(g)**

**SPECIFIC PURPOSE FOR THE REGULATION**

These proposed regulations reiterate statutory requirements in order to provide clarity to the regulated community.

**NECESSITY**

These proposed regulations are necessary so that the regulated community, when referencing the regulations, understands the prohibitions against deposit of petroleum to a red-tagged system and prohibitions against removing, defacing, altering, or tampering with a red tag.

**2717.2. REMOVING RED TAGS**

**2717.2, subdivision (a)**

**SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation reiterates the statutory requirement that a local agency, after receiving notice from an owner or operator that a significant violation has been corrected, inspect the system within five business days to determine whether the violation has been corrected. The proposed regulation also provides local agencies authority to provide written authorization allowing an owner or operator to remove a red tag prior to the local agency's inspection if the owner or operator documents to the satisfaction of the local agency that the significant violation has been corrected. For purposes of clarity, the proposed section reiterates the statutory requirement that a local agency remove a red tag immediately after finding that the significant violation has been corrected.

**NECESSITY**

This proposed regulation, specifically the alternative that allows a local agency to provide written authorization to the owner or operator to remove

a red tag, is necessary to prevent systems that have been corrected from sitting idle for up to five business days pending re-inspection by the local agency. Additionally, this regulation may provide an incentive for owners and operators to quickly correct significant violations so that the system may receive fuel. The quick correction of significant violations will provide further protection to the environment.

**2717.2, subdivision (b)**

**SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation provides that the local agency or the owner or operator, depending on who removes a red tag, shall determine the level of stored product in the tank after removing the red tag.

**NECESSITY**

This proposed regulation, in conjunction with proposed section 2717.1(c), is necessary to provide the local agency with information to determine whether the red-tagged system has received petroleum in violation of the law. (See Health & Saf. Code, § 25292.3 subds. (c), (d).) This information will assist any enforcement action for improper deposit of petroleum into a UST system with a red tag.

**2717.2, subdivision (c)**

**SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation provides that an owner or operator who removes a red tag pursuant to written authorization by the local agency shall return the tag to the local agency within five business days, or sooner if requested by the local agency.

**NECESSITY**

This proposed regulation is necessary to prevent the loss of red tags removed by owners and operators and provide for their return to the local agency for re-use.

**2717.3. REMOVAL OF RED TAG FROM EMERGENCY GENERATOR TANK SYSTEM PRIOR TO CORRECTION OF SIGNIFICANT VIOLATION**

**SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation provides that a local agency may remove or authorize the removal of a red tag from an emergency generator tank system prior to the significant violation being corrected if the local agency determines that an emergency situation exists requiring operation of the system.

**NECESSITY**

This proposed regulation is necessary to protect the public in an emergency by ensuring that vital services powered by emergency generators may continue even if an emergency generator tank system has been red-tagged but the significant violation has not yet been corrected.

#### **2717.4. NOTICE OF CORRECTION OF SIGNIFICANT VIOLATION** **SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation provides that, after making a determination that a significant violation has been corrected, the local agency shall provide written notice to the owner or operator of its determination.

#### **NECESSITY**

This proposed regulation is necessary to ensure that owners and operators are provided notice of when the local agency determines that a significant violation has been corrected. This will remove any confusion regarding whether an owner or operator has complied with the obligation to correct a significant violation.

#### **2717.5. SIGNIFICANT VIOLATIONS EXEMPT FROM RED TAGS** **SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation creates an exemption from the authority for a local agency to affix a red tag for a UST system component found to be in significant violation if the violation is discovered during periodic testing of the component. The exemption would not apply if: (1) the violation poses an imminent threat to human health or safety or the environment; (2) there is evidence the component in violation has been tampered with; or (3) the owner or operator fails to take appropriate action to correct the violation.

#### **NECESSITY**

Current law requires that owners and operators perform periodic testing of UST system components. This proposed regulation is necessary because the State Board recognizes that, over time, even components that are properly installed and maintained may fail to perform as required. Some of these failures may constitute “significant violations” as that term is defined in proposed section 2717. The State Board believes that if such a violation does not pose an imminent threat, is not the result of tampering, and is appropriately remedied, allowing a local agency to affix a red tag to the system’s fill pipe would be overly harsh. Furthermore, without this exemption owners and operators would be discouraged from performing periodic testing in the presence of the local agency inspectors.

#### **2717.6. CONTENT OF RED TAGS** **SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation describes in detail the appearance of a red tag.

#### **NECESSITY**

This proposed regulation is necessary to ensure the uniform appearance to red tags so that local agencies and the regulated community can readily identify an official red tag. The information contained on the red tag is designed to quickly convey to any person that delivery of petroleum while the tag is attached to the fill pipe is prohibited. The blank space on the tag (provided for local agency inspectors to write the name of the local agency and the agency’s telephone

number) is necessary so that questions regarding the red tag may be directed to the appropriate local agency.

**2717.7. ENFORCEMENT SCOPE OF ARTICLE**  
**SPECIFIC PURPOSE FOR THE REGULATION**

This proposed regulation provides that affixing a red tag to the fill pipe of a UST system found to have one or more significant violations does not limit the authority to take additional actions.

**NECESSITY**

Because a red tag prohibits only the deposit of petroleum and not the continued operation of the system, depending on the nature of the significant violation, a local agency may wish to require removal of product, revoke or modify the permit, and/or take other action in order to adequately protect the environment. This is especially true if the significant violation is an ongoing or potential release. This proposed regulation is necessary in order to clarify for both local agencies and the regulated community that use of a red tag is only one enforcement option available and does not prohibit additional actions.